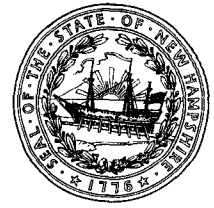




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Three Ponds Investments, LLC
c/o Kimberley Hardy
9 Oak Hill Circle
Atkinson, NH 03811

Re: Northeast Pond Road, Milton, NH
Wetland Bureau File #2005-2859

**ADMINISTRATIVE ORDER
No. WD 06-011**

March 8, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Three Ponds Investments, LLC, pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Three Ponds Investments, LLC, ("TPI") is a Limited Liability Company having a mailing address of 9 Oak Hill Circle, Atkinson, NH 03811.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control

PART Wt 203 RECONSIDERATION

Wt 203.01 Reconsideration of Administrative Orders.

(a) Pursuant to RSA 482-A:10, I, any person to whom an administrative order is issued who wishes to contest the order or any part of the order shall request the department to reconsider the order or any part of the order.

(b) A request to reconsider an administrative order shall be filed in accordance with this section.

(c) Pursuant to RSA 482-A:10, I, a request for reconsideration of an administrative order shall be filed within 20 days of the issuance of the order.

(d) The person requesting reconsideration shall provide the following information:

(1) The name, mailing address, and daytime telephone number of each person requesting reconsideration;

(2) A clear and concise statement of the reason(s) why the person believes the decision to be in error;

(3) A clear and concise statement of the facts upon which the department is expected to rely in granting relief;

(4) A clear and concise statement of the specific relief or ruling requested, such as whether the order should be rescinded in whole or in part or whether compliance dates should be changed;

(5) The number and date of the order which is the subject of the request, as shown on the first page of the order under the words "Administrative Order"; and

(6) Such other information as the person filing the request deems pertinent and relevant, including sworn written testimony and other evidence.

(e) Upon receiving a request for reconsideration of an administrative order that meets the conditions of (c) and (d), above, the department shall determine whether a hearing would be beneficial to a thorough consideration of the issues raised in the request.

(f) The department's determination shall be based on:

(1) The complexity of the issues; and

(2) Whether the information on which the department is being asked to rely in its reconsideration would only effectively be presented at a hearing.

(g) If the department determines pursuant to (e) and (f), above, that a hearing would be beneficial, the department shall send written notification of the date and time at which a hearing will be held on the request to:

(1) The person requesting the reconsideration;

through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.

5. TPI is the owner of land located on Northeast Pond Road in Milton, more particularly described on the Milton Tax Map as Map 23 Lot 44 ("the Property").
6. On November 28, 2005, DES received a complaint alleging siltation into Northeast Pond from the Property.
7. On November 29, 2005, DES received two additional complaints alleging freshwater wetlands disturbance on the Property.
8. By letter dated December 6, 2005, DES notified TPI of the complaint, requested that it refrain from further work and respond to the allegation in writing within 20 days of receipt of the letter.
9. On December 21, 2005, DES personnel conducted a site inspection of the Property and observed the following:
 - a. A timber harvesting operation had occurred at the Property;
 - b. The Property was snow covered;
 - c. No work was being conducted at the time of inspection of the Property.
10. On December 21, 2005, DES personnel spoke via telephone with Charles Therriault who stated he was representing TPI. Mr. Therriault indicated that he was unaware of any wetland violations on the Property. DES stated that it would conduct another site inspection in the future when site conditions were more favorable to determine if wetland violations had occurred on the Property.
11. On January 18, 2006, DES personnel conducted another site inspection of the Property and observed the following:
 - a. Approximately 4,000 sq. ft. of wetlands had been disturbed from a timber harvesting operation, without a permit from DES;
 - b. Excessive turbidity from an eroding development site had migrated into a roadside ditch wetland and downstream wetland. No sedimentation or erosion controls were in place.

D. DETERMINATIONS

1. TPI has violated RSA 482-A:3, I, by dredging approximately 4,000 square feet of wetland from a timber harvesting operation without a permit from DES.

2. TPI has violated RSA 482-A:3, I, by failing to comply with timber harvesting best management practices.
3. TPI has violated RSA 482-A:3, I, by failing to adequately install and maintain erosion controls to protect wetlands.
4. TPI has violated RSA 485-A:17, by failing to comply with best management practices, resulting in excessive turbidity to wetlands.

E. ORDER

Based on the above findings, DES hereby orders TPI as follows:

1. **Within 10 days of the date of this Order**, stabilize exposed soil areas using best management practices and retain a certified wetland scientist to develop restoration plans in accordance with Item 2 below, supervise the implementation of the restoration in accordance with Item 3 below, and to submit restoration progress reports.
2. **Within 90 days of the date of this Order**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date; and
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, an initial monitoring report documenting that restoration has been completed and monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on July 1, 2006, October 30, 2006 and October 30, 2007, respectively.

3. **Implement** the restoration plans proposed in accordance with Item E.2 above only after receiving written approval, and as conditioned, by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

David Price, Compliance Investigator
DES Water Division
50 International Drive
Suite 200
Portsmouth, NH 03801
Fax: (603) 559-1510
e-mail: dprice@des.state.nh.us

F. APPEAL

Any person aggrieved by determinations D.1, D.2, and D.3 of this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

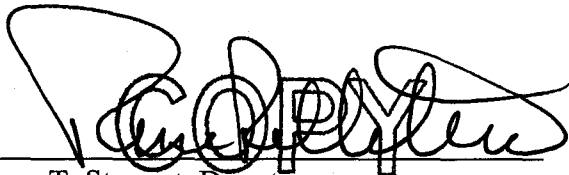
Any person aggrieved by determinations D.4 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

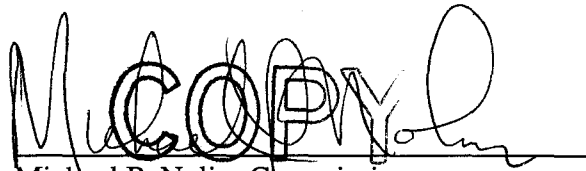
Filing an appeal or motion for reconsideration of the Order will not automatically relieve TPI of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. TPI remains obligated to comply with all applicable requirements. DES will continue to monitor TPI's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.


for Harry T. Stewart, Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7004 0750 0001 2419 3056

ec: Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
David Price, DES Wetlands Bureau
cc: Gretchen R. Hamel, Legal Unit Administrator
Kimberley Hardy, Registered Agent
Shaines and McEachern, P.A.
United States Army Corps of Engineers, Regulatory Office New England District
Milton Board of Selectmen
Milton Conservation Commission
Milton Land Use Clerk